


B 104 (Rev. 8/87) (12640)		<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
<b>PLAINTIFFS</b>  RICHARD KIPPERMAN		<b>DEFENDANTS</b>  BRADLEY PROULX		
ATTORNEYS (Firm Name, Address, and Telephone No.) L. Scott Keehn (61691) Lynn M. Beekman (149325) ROBBINS & KEEHN, APC 530 B Street, Suite 2400 San Diego, CA 92101 Telephone No. (619) 232-1700		ATTORNEYS (If Known) Case # : 01-90355-PBAD Name : KIPPERMAN V. PROULX Judge : PETER BOWIE Chapter: AD Filed : September 04, 2001 14:32:30 Deputy : S DAHL Receipt: 154874 Amount : \$150.00		
PARTY (Check one box only) <input checked="" type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input type="checkbox"/> 3 U.S. NOT A PARTY				
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)  To determine nature and extent of trustee's lien and for declaratory relief.				
<b>NATURE OF SUIT</b> (Check the one most appropriate box only).				
<div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input type="checkbox"/> 454 To Recover Money or Property  <input checked="" type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property  <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property  <input type="checkbox"/> 424 To obtain or to revoke a discharge 11 U.S.C. §727         </div> <div style="width: 30%;"> <input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11 or Chap 13 Plan  <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. §523  <input type="checkbox"/> 434 To obtain an injunction or other equitable relief  <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan         </div> <div style="width: 30%;"> <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action    <div style="text-align: right;"> <b>ASSIGNED TO JUDGE PETER W. BOWIE</b> </div> </div> </div>				
ORIGIN OF PROCEEDINGS <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23				
DEMAND	NEAREST THOUSAND \$	OTHER RELIEF SOUGHT Declaratory Relief		<input type="checkbox"/> JURY DEMAND
<b>BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b>				
NAME OF DEBTOR Sara Newsome Burns		BANKRUPTCY CASE NO. 99-33191-B7		
DISTRICT IN WHICH CASE IS PENDING SO. DIST. OF CALIFORNIA		DIVISIONAL OFFICE N/A		NAME OF JUDGE HON. Peter W. Bowie
<b>RELATED ADVERSARY PROCEEDING (IF ANY)</b>				
PLAINTIFF		DEFENDANT		ADVERSARY PROCEEDING NO.
DISTRICT		DIVISIONAL OFFICE		NAME OF JUDGE
FILING FEE (Check one box only.) <input checked="" type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED    FEE IS <input type="checkbox"/>				
DATE 9/4/01	PRINT NAME L. Scott Keehn		SIGNATURE OF ATTORNEY (OR PLAINTIFF) 	

ORIGINAL

L. Scott Keehn (SBN 61691)  
 Lynn M. Beekman (SBN 149325)  
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Case # : 01-90355-PBAD  
 Name : KIPPERMAN V. PROULX  
 Judge : PETER BOWIE  
 Chapter: AD

Filed : September 04, 2001 14:32:30  
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 Amount : \$150.00

Special Counsel for  
**RICHARD KIPPERMAN, Chapter 7 Trustee**

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF CALIFORNIA**

In re:  
**SARA NEWSOME BURNS**, an individual,  
  
 Debtor.

**CASE NO. 99-33191-B7  
 ADV. NO.**

**RICHARD KIPPERMAN**, Trustee,  
  
 Plaintiff,

**COMPLAINT TO DETERMINE  
 NATURE AND EXTENT OF  
 TRUSTEE'S LIEN AND FOR  
 DECLARATORY RELIEF**

v.

**BRADLEY PROULX**, an individual,  
  
 Defendant.

**ASSIGNED TO  
 JUDGE PETER W. BOWIE**

Plaintiff RICHARD KIPPERMAN (hereinafter "Trustee" or "Plaintiff"), Chapter 7 Trustee herein, brings this complaint against the Defendant as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334(a) and (b) because it arises under, in and is related to the above-referenced bankruptcy case.

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**ORIGINAL**

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2. Venue is proper in the Southern District of California in accordance with 28 U.S.C. § 1409(a) because this case arises under, in and is related to above-referenced bankruptcy case which is pending in this district.

3. This matter constitutes a core proceeding to be heard and determined by the Bankruptcy Court in accordance with 28 U.S.C. §§ 157(b)(A), (K) and (O).

### **GENERAL ALLEGATIONS**

4. Bradley Proulx ("Defendant"), is a creditor that obtained a judgment from the San Diego Superior Court against the Debtor on or about October 30, 1998 in the amount of \$231,462.61 in a case entitled Bradley Proulx v. Sara Newsome Burns Case No. 711064 (the "*State Court Judgment*").

5. On or about November 6, 1998, Defendant recorded an Abstract of Judgment against Debtor's residence based on his *State Court Judgment*. This abstract created a judicial lien on the Debtor's residence (the "*RP Judgment Lien*").

6. Defendant asserts that on or about November 10, 1998, based on his State Court Judgment, he obtained an "*Order To Appear For Examination*" requiring the Debtor to appear for a judgment debtor's examination.

7. Defendant asserts that on or about December 16, 1998, based on the State Court Judgment, Defendant obtained a "*Turnover Order In Aid Of Execution*" directing Debtor and her attorneys to turn over to the Marshall all funds received by the Debtor resulting from her participation as a relator in United States Of America ex rel Sara Newsome (Burns) v. Family Practice Associates, et al. Civil Action No. 91-1325-E(P) (the "*Whistleblower Action*").

8. Defendant asserts that on or about January 13, 1999, based on the *State Court Judgment*, he obtained a Notice of Lien on the Debtor's rights to monies procured in the *Whistleblower Action*.

9. Defendant alleges that on or about January 21, 1999, he filed a "*Notice Of Judgment Lien On Personal Property*" with the California Secretary of State based on the State Court Judgment.

10. On or about January 25, 1999, Debtor filed Chapter 13 Case No. 99-00811-B13 (the "*Chapter 13 Case*") and Thomas Billingslea, Jr. was appointed to act as the Chapter 13 Trustee.

11. Plaintiff is informed and believes, and based thereon alleges, that the Debtor expected to receive her final \$150,000 cash fund from the *Whistleblower Action* sometime in early/mid 1999 (the "*\$150,000 Cash Fund*"). Defendant made application to the bankruptcy court for an order requiring that the *\$150,000 Cash Fund* be made to him. On or about February 19, 1999, the Honorable John J. Hargrove ordered that the *\$150,000 Cash Fund* be held by the Debtor's counsel, Robbins & Keehn, APC, in a segregated, interest bearing account until "further order of this court" (the "*Order Authorizing Cash Fund*"). The *Order Authorizing Cash Fund* also provided that "in the event the Debtor dismisses her Chapter 13 action, the funds shall remain in the account of Debtor's counsel, pending further order of the court."

12. On or about July 22, 1999, an "*Order Dismissing Case*" was entered in the *Chapter 13 Case*. Thereafter, the Debtor filed a Notice of Appeal of the "*Order Dismissing Case*." On or about December 26, 2000, the United States Bankruptcy Appellate Panel For The Ninth Circuit reversed the "*Order Dismissing Case*" and remanded the *Chapter 13 Case* to the Bankruptcy Court for further proceedings consistent with its judgment.

13. Defendant asserts that on or about July 30, 1999, he obtained a "*Writ Of Execution*" based on his State Court Judgment.

14. Defendant asserts that on or about August 2, 1999, based on his *State Court Judgment*, he obtained a "*Turnover Order In Support Of Ex Parte Application For Turnover Order*" requiring Debtor and her counsel, Robbins & Keehn, APC, to turnover the *\$150,000 Cash Fund*.

15. Defendant asserts that on or about August 2, 1999, he served Debtor's counsel, Robbins & Keehn, APC, with a copy of the "*Writ Of Execution*", "*Notice Of Levy*", "*Memorandum Of Garnishee*" and "*Turnover Order In Support Of Ex Parte Application For Turnover Order*" based on his *State Court Judgment*.

16. On or about August 2, 1999, Defendant made an ex parte application to the bankruptcy court to order the *\$150,000 Cash Fund* to be released to Defendant. That ex parte application was denied.

17. On or about August 11, 1999, Debtor filed this Chapter 7 case and Plaintiff was appointed to act as the Chapter 7 Trustee. Thereafter, Plaintiff made demand upon Debtor's counsel,

1 Robbins & Keehn, APC, to turnover the *\$150,000 Cash Fund* because it was property of the estate  
 2 created by filing the Chapter 7 Case. Robbins & Keehn, APC complied with that request and Plaintiff  
 3 has maintained possession and control of that fund as property of the estate.

4 18. On June 29, 2000, this Court entered "Orders: (1) Granting Debtor's Motion to Avoid  
 5 Judicial Lien, etc." (The "522 Order"). The 522 Order avoided a substantial portion of the Defendant's  
 6 *RP Judgment Lien*, but fixed the amount of the *RP Judgment Lien* which would survive the avoidance  
 7 at \$22,820.98 (the "*Surviving Lien*").

8 19. Defendant has made demand upon Plaintiff to turnover the *\$150,000 Cash Fund*  
 9 claiming that he has a first priority secured lien thereon. Plaintiff denies Defendant's claim and alleges  
 10 he has a first priority secured lien on the *\$150,000 Cash Fund* by virtue of 11 U.S.C. §544 and because  
 11 Defendant's liens are either voidable, expired or have not been properly perfected.

### 12 **FIRST CLAIM FOR RELIEF**

13 (Action To Determine Nature And Extent Of Trustee's Interest

14 In Property of the Estate)

15 20. Plaintiff incorporates herein by this reference each and every allegation contained in  
 16 Paragraphs 1 through 18 above as though the same were fully set forth at this point.

17 21. The Trustee alleges that, pursuant to 11 U.S.C. §544(a)(1), at the commencement of  
 18 the Chapter 7 case he became a judicial lien creditor with a secured, first priority lien on the *\$150,000*  
 19 *Cash Fund* that is a sum certain of money which is now held by him in trust for the benefit of the  
 20 estate.  
 21

22 22. Trustee seeks a determination of the nature and extent of his judicial lien and other  
 23 interests in the *\$150,000 Cash Fund* or property of the estate, as well as a determination that his  
 24 interest as the statutory hypothetical judicial lien holder is superior to Defendants voidable, expired,  
 25 unperfected security interest, and any other claim of Defendant in that specific property.

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**SECOND CLAIM FOR RELIEF**

(Declaratory Relief)

23. Plaintiff incorporates herein by this reference each and every allegation contained in Paragraphs 1 through 22 above as though the same were fully set forth herein at this point.

24. A controversy has arisen between Plaintiff on the one hand, and the Defendant on the other, in that:

(A) Plaintiff contends that Defendant does not have a valid or enforceable, secured lien on the *\$150,000 Cash Fund* because Defendant's liens are either voidable, expired, not properly perfected or statutorily subordinated by 11 U.S.C. §544(a)(1). Plaintiff contends that he has a superior lien on the *\$150,000 Cash Fund* as a result of 11 U.S.C. §544(a)(1), and that his claim entirely defeats all of Defendant's claims in and to the *\$150,000 Cash Fund*; whereas,

(B) Defendant contends that he has a properly perfected, valid, first priority secured lien on the *\$150,000 Cash Fund* and that he is entitled to the entire *\$150,000 Cash Fund* and that the Trustee's lien claim, as well as any other claims that the Trustee may assert in the *\$150,000 Cash Fund* are junior to his lien; and,

(C) that his lien consumes the entire *\$150,000 Cash Fund*.

25. A judicial declaration is necessary and appropriate at this time in order that Plaintiff may ascertain the nature, extent, and priority of the Trustee's property interest in the *\$150,000 Cash Fund* in order to ascertain the extent of the estate's assets and to administer the estate in accordance with his duties as Trustee.

WHEREFORE, Plaintiff prays for relief as follows:

**ON THE FIRST CLAIM FOR RELIEF:**

That the Court enter an order establishing and determining the existence, nature, extent and priority of the Plaintiff's interest in the *\$150,000 Cash Fund* as the first priority and prevailing lien claim in that fund;

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**ON THE SECOND CLAIM FOR RELIEF:**

That the Court enter an order declaring that:

- (1) Plaintiff has a secured, first priority lien on the *\$150,000 Cash Fund* and declaring that Defendant has no secured lien on the *\$150,000 Cash Fund*, or that his interest therein is junior or subordinate to that of the Trustee;
- (2) that other than the *Surviving Lien*, Defendant holds no secured claim in this estate; and,
- (3) that the Trustee holds the *\$150,000 Cash Fund* as property of the Debtor's estate free and clear of all liens and adverse claims of the Defendant.

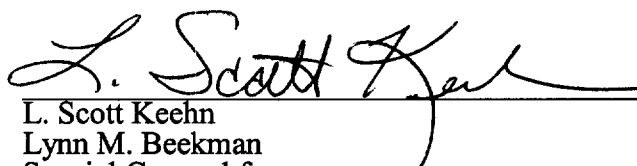
**ON ALL CLAIMS FOR RELIEF:**

- (1) That the Court enter an order awarding Plaintiff his attorneys' fees and costs of suit according to proof; and,
- (2) For such other and further relief as the Court deems just and proper.

Dated: 9/4/01

**ROBBINS & KEEHN**  
A Professional Corporation

By:

  
\_\_\_\_\_  
L. Scott Keehn  
Lynn M. Beekman  
Special Counsel for  
Richard Kipperman, Chapter 7 Trustee

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